

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICK M. McCOLLUM, et al.,

No. C 04-03339 CRB

Plaintiffs,

**ORDER DENYING LEAVE TO FILE
MOTION FOR RECONSIDERATION**

v.

THE STATE OF CALIFORNIA, et al.,

Defendants.

On August 8, 2006, the Court issued a Memorandum and Order granting in part and denying in part defendants' motion to dismiss the claims of plaintiff Patrick McCollum. Nearly nine months later, plaintiff McCollum filed a motion for leave to file a motion for reconsideration of that decision. That motion is now pending before the Court.

Plaintiff's motion is DENIED. Civil Local Rule 7-9(b) requires the party moving for reconsideration to show one of the following:

(1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the court before entry of the interlocutory order for which reconsideration is sought. The party shall also show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order; or

(2) The emergence of new material facts or a change of law occurring after the time of such order; or

(3) A manifest failure by the court to consider material facts which were presented to the court before such interlocutory order.

1 Civil Local Rule 7-9(b)(1). Plaintiff's motion for leave to file does not even attempt to
2 comply with this Rule; instead, he merely reargues the issues already presented to the Court.
3 The Court disagrees with plaintiff's recent characterization of the ruling as deciding issues
4 "sua sponte." The Memorandum and Order relied on cases cited by and thoroughly
5 discussed by the parties in their briefs and at oral argument. Plaintiff's inordinate and
6 unexplained delay in bringing this motion is further evidence that the Court's ruling did not
7 decide any issues that were not raised in the parties' papers; if it had, the Court expects that
8 plaintiff, who is represented by counsel, would have promptly moved for an opportunity to
9 respond to the "new" issues raised by the Order.

10 **IT IS SO ORDERED.**

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12 Dated: June 11, 2007

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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE